

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA

In re

Case No. 03-32235-DHW

Chapter 13

LaTASHA BULLOCK,

Debtor.

MEMORANDUM OPINION

Capitol Chevrolet filed an objection to confirmation of the debtor's proposed chapter 13 plan contending that the debtor is not applying all of her disposable income to fund the plan.

An evidentiary hearing on the objection was held October 6, 2003. Capitol Chevrolet presented evidence only through the testimony of the debtor and her August employment pay stub. The relevant facts are not in dispute.

The debtor filed this chapter 13 case on July 23, 2003. She is employed as a teacher's aide in the Lowndes County School System. She has four minor children ranging in age from 1 to 11. In addition to her employment income, she receives food stamp assistance and social security for two of her children. She receives no child support and has no other source of revenue other than the earned income tax credit. She owns no real property and has no equity in any nonexempt personal property with the possible exception of some bunk beds.

The precise amount of the debtor's income and expenses has been a moving target in this case. The debtor filed Schedules I and J no less than three times during the pendency of this bankruptcy. The debtor testified that the second amended Schedules I and J are accurate and supported by documentation she presented to her attorney. The debtor testified that she did not know how the figures in the initial and first amended Schedules I and J were derived. Based on the debtor's testimony, the court will accept

Schedules I and J as last amended.¹

The debtor earns \$1,151 per month from her job as a teacher's aide. After deductions for taxes, retirement, and insurance, the debtor takes home \$931.74.² The debtor receives \$228 per month in social security for the children and \$154 in food stamps.

The debtor also receives an annual federal tax refund of between \$3,000 and \$4,000. Around \$2,500 of the refund results from the earned income tax credit. Assuming the refund averages \$3,500, spreading the refund over a period of 12 months would produce \$291.67 in additional income.³

Adding all of these together, the debtor's disposable income totals \$1,605.41. The difference in this figure from the debtor's income represented on Schedule J arises solely from the debtor's failure to account

¹ The acceptance is not without some misgiving. The three sets of schedules vary dramatically. The initial and first amended Schedules I and J reflect the debtor's monthly income at \$2,124 and her monthly expenses at \$1,790 and \$1,765, respectively. The second amended Schedules I and J reflects the debtor's monthly income at \$1,396.74 and monthly expenses at \$1090. However, the debtor's financial circumstances did not change postpetition with the possible exception of a reduction in social security income. The cause of the other discrepancies is unknown. The debtor signed the schedules three times under penalties of perjury. The attorney submitted the schedules three times under the constrictions of Rule 11. Carelessness and inattentiveness may sometimes appear indistinguishable from fraud.

² The deductions itemize as follows: \$9.76 federal income tax withholding; \$88.05 FICA; \$37.90 state income tax withholding; \$57.55 retirement; \$26.00 life and disability insurance.

³ The debtor allocated only \$83 per month on Schedule I for her annual tax refund. However, \$83 per month would represent an annual tax refund of less than \$1,000. The debtor testified that her state income tax refund is less than \$100 per year. She did not account for that in Schedule I.

for the full amount of her annual income tax refund.⁴

The debtor's monthly expenses as reflected on second amended Schedule J total \$1,147 and are itemized in the table below:⁵

Rent	\$276
Electricity and Heating Fuel	\$100
Water and Sewer	\$50
Food	\$200
Clothing	\$100
Laundry and Dry Cleaning	\$30
Medical and Dental Expenses	\$75
Student Loan Payment	\$57
Transportation (not including car payments)	\$120
Charitable Contributions	\$50
Auto Insurance	\$89
Total Monthly Expenses	<u>\$1,147</u>

⁴ Counsel for the debtor may have erroneously assumed that monies received from the earned income credit are not included in the disposable income calculation. However, the monies are not exempt from treatment as income just because they may be exempt from property of the estate.

⁵ The table includes \$57.00 per month which the debtor makes via a payroll deduction toward repayment of a student loan. Otherwise, the table conforms in all respects to the debtor's second amended Schedule J.

Subtracting the debtor's monthly expenses from her monthly income leaves \$458.41 monthly disposable income.

The debtor filed a chapter 13 plan proposing to pay only \$295 each month to the chapter 13 trustee for a period of 48 months resulting in a 0% payment to unsecured creditors.⁶ The \$295 per month to the trustee will pay secured claims for jewelry, bunk beds, and a 1998 Chevy Suburban valued by the debtor at \$350, \$167, and \$8,907 respectively.

Conclusions of Law

The debtor has the burden of proving that the requirements for confirmation under 11 U.S.C. § 1325 have been met. *Barnes v. Barnes (In re Barnes)*, 32 F.3d 405, 407 (9th Cir. 1994).

If the trustee or the holder of an unsecured claim objects to confirmation, the court may not approve the plan unless "the plan provides that all of the debtor's projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan." 11 U.S.C. § 1325(b)(1)(B).

"Disposable income" is defined by § 1325(b)(2) as income which is received by the debtor and which is not reasonably necessary to be expended—

(A) for the maintenance or support of the debtor or a defendant of the debtor, and

(B) if the debtor is engaged in business, for such payment of expenditures necessary for the continuation, preservation, and operation of such business.

⁶ The debtor initially proposed a 54-month plan with 35% to unsecured creditors and a monthly payment to the trustee of \$331.

“Under the disposable income test, the bankruptcy court is to subtract the debtor's budgeted expenses, assuming they are reasonably necessary, from Debtor's income and determine if there is any money left.” *Cameron v. Cameron (In re Cameron)*, 243 B.R. 117 (M.D. Ala. 1999).

The court cannot conclude that any of the debtor's expenses are not reasonably necessary. Indeed, the debtor's expenses appear to be minimal at best. Two expenses are glaringly low: \$200 per month for food and \$100 per month for clothing. The amounts appear untenable for a family of five with 4 children between the ages of 1 and 11. However, the debtor testified under oath to the accuracy of those amounts.

Subtracting the debtor's budgeted expenses from her income leaves \$458.41 to fund the plan. The debtor has proposed to pay only \$295 toward the plan. Therefore, the debtor has not devoted all of her disposable income to fund the plan. In fact, the debtor has understated her disposable income by over 35%.

However, the court is aware that budgeting is an art and not a science and that estimates and averages may be necessary. The court is also aware that unanticipated expenses may arise which cannot be fully provided for in advance. The debtor's schedule allocates no money for “rainy day” expenses.

Therefore, the court concludes that the plan is not confirmable to the extent that the debtor has not committed at least \$395 per month to fund the plan. The debtor may choose to pay \$395 monthly or \$295 per month with \$1,200 annually from her income tax refunds.

The law constrains this result though the court is not indifferent to the difficulty of maintaining a household on the expenses budgeted by the debtor.⁷ However, the debtor has simply failed to meet her burden that

⁷ Indeed, the debtor testified that she barely gets by – that she barely has income to pay expenses.

she has devoted all of her disposable income to fund the plan.

A separate order consistent with this opinion will enter denying confirmation and conditionally dismissing the case unless the debtor files an amended plan consonant with this holding.

Done this 3 day of November, 2003.

/s/ Dwight H. Williams, Jr.
United States Bankruptcy Judge

c: Debtor

Richard D. Shinbaum, Attorney for Debtor

C. Brandon Sellers, III, Attorney for Debtor

Vonda S. McLeod, Attorney for Debtor

Richard C. Dean, Jr., Attorney for Creditor

Curtis C. Reding, Trustee

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MIDDLE DISTRICT OF ALABAMA

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Chapter 13

LaTASHA BULLOCK,

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ORDER DENYING CONFIRMATION AND
DISMISSING BANKRUPTCY CASE

In accordance with the Memorandum Opinion entered this day on the objection to confirmation filed by creditor Capitol Chevrolet, it is hereby

ORDERED that the confirmation of the debtor's proposed chapter 13 plan is DENIED, and this case is DISMISSED effective December 1, 2003 unless the debtor amends the plan consonant with the Memorandum Opinion prior to the effective date.

Done this 3 day of November, 2003.

/s/ Dwight H. Williams, Jr.
United States Bankruptcy Judge

c: Debtor

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